

IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
COMMON LAW DIVISION
GROUP PROCEEDINGS LIST

S ECI 2020 03402

BETWEEN:

5 Boroughs NY Pty Ltd (ACN 632 508 304)

Plaintiff

- and -

State of Victoria & Ors

Defendants

ORDER

JUDGE

The Honourable Justice Keogh

DATE MADE:

12 February 2024

ORIGINATING PROCESS:

Amended Writ filed 28 April 2022

HOW OBTAINED:

By consent

ATTENDANCE:

A Hochroth with H Whitwell, counsel for the plaintiff
R Doyle SC with R Amamoo, counsel for the defendants

OTHER MATTERS:

In these orders, Group Member has the same meaning as the definition of Group Members in paragraph 1 of the Plaintiff's Amended Statement of Claim filed on 21 September 2022.

The parties are agreed that if the mediation conducted in accordance with order 20 of these orders is unsuccessful, they will jointly propose to the Court that:

- there be a second Court-ordered mediation after the parties' evidence is filed and prior to the initial trial of common questions;
- a further opt-out and claim registration process be conducted prior to the second Court-ordered mediation;



- a notice to potential Group Members be distributed in respect of that further opt-out and claim registration process and those who registered in accordance with these orders would not need to be notified (but if it is more practicable for those persons to receive the second notice, that is permitted); and
 - an order be made pursuant to section 33ZG of the *Supreme Court Act 1986* (Vic) (**'Act'**) with respect to the second mediation, which includes requiring any Group Member who wishes to obtain any benefit arising from any settlement (subject to Court approval) of the proceeding reached at the second mediation to register, and which treats those who are Registered Group Members in accordance with these orders as registered Group Members for the purpose of the second mediation.
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THE COURT ORDERS:

Opt-out and class closure

1. The date and time by which a Group Member may opt out of the proceeding pursuant to section 33J(1) of the *Supreme Court Act 1986* (Vic) (**'Act'**) is fixed at 4:00pm AEST on 1 July 2024 (**'Class Deadline'**).
2. The terms of the commencement, opt out and claim registration notices set out at:
 - a. Annexure A (**'Notice'**);
 - b. Annexure B (**'Abridged Notice'**); and
 - c. Annexure C (**'Email Notice'**),

to these orders are approved, pursuant to sections 33X(1)(a) and (5) and 33Y of the Act.

3. Pursuant to section 33Y of the Act, the Notice, Abridged Notice and Email Notice be given to Group Members according to the following procedure:
 - a. The First Defendant procure that the Department of Jobs, Skills, Industries and Regions, through the Defendants' solicitors, provide a copy of these orders and the list referred to in the letter from the Defendants' solicitors to the Plaintiff's solicitors dated 15 December 2023 (**'List'**) to Computershare Limited (**'Computershare'**);



- b. The List and all information contained therein (including the identity of the businesses listed, physical addresses and email addresses) be kept and treated as confidential by Computershare at all times;
- c. By 26 February 2024, the First Defendant cause Computershare to use its best endeavours to send:
 - i. the Notice by ordinary post to all businesses in the List where a postal address is available for that person or entity; and
 - ii. the Email Notice to all businesses in the List where an email address is available.
- d. By 26 February 2024, the Plaintiff's solicitors send a copy of the Notice by email to those Group Members who have already completed a registration process with the Plaintiff in connection with this proceeding, under cover of a communication which will inform them that they are deemed Registered Group Members by the operation of order 13 of these orders, but have the right to opt out of the proceeding (in accordance with order 6) if they prefer to do so.
- e. By 26 February 2024, and on:
 - i. a second occasion by no later than 28 March 2024; and
 - ii. a third occasion by no later than 29 May 2024,the First Defendant issue posts which include a copy of the Abridged Notice on each of the following:
 - A. the X account of Business Victoria;
 - B. the website of Business Victoria (on the latest updates and news and updates sections of the website);
 - C. the Facebook page of Business Victoria; and
 - D. the Facebook page of "I am a business owner in Victoria, Australia".
- f. By 26 February 2024 and again on 20 May 2024, the Plaintiff's solicitors publish a copy of the Abridged Notice in each of the following newspapers: Melbourne Herald Sun (online only), The Age (online only), The Australian Financial Review (online, Victoria only), The Weekly Times, the Geelong Advertiser, the Bendigo Advertiser, the Ballarat Courier, and The Border Mail.
- g. By 26 February 2024, the Principal Registry of the Supreme Court of Victoria display the Notice on the website of the Supreme Court of Victoria continuously until the Class Deadline, and make the Notice available for inspection at the



Principal Registry of the Supreme Court of Victoria continuously until the Class Deadline.

- h. By 26 February 2024, the Plaintiff's solicitors display a copy of the Notice and these orders on the website of Quinn Emanuel at <https://hotelquarantineclassaction.com.au/> continuously until the Class Deadline.
 - i. The Notice, Abridged Notice and Email Notice may be amended by agreement between the parties before they are published or distributed in order to correct any typographical error, or any postal, website or email address or telephone number.
4. The costs of distributing the Notice, the Abridged Notice and Email Notice (including any disbursements incurred) in accordance with order 3 be paid by the Plaintiff, but on the basis that those costs will subsequently fall to be costs in the proceeding.
5. By each of 25 March 2024, 29 April 2024 and 3 June 2024 the Defendants provide to the Plaintiff an update containing the following information which the First Defendant will obtain from Computershare:
 - a. the total number of emails sent to businesses in the List;
 - b. the number of emails marked delivered to the recipient;
 - c. the number of emails marked undelivered (i.e the recipients for whom there is a 'bounce-back' notification);
 - d. the number of notices sent by post; and
 - e. the number of postal notices returned undelivered.
6. Pursuant to section 33J(2) of the Act, any Group Member who wishes to opt out of this proceeding complete and deliver a duly completed opt out notice in the form of Schedule 2 to the Notice ('**Opt Out Notice**') to the Principal Registry of the Supreme Court of Victoria before the Class Deadline.
7. If, on or before the Class Deadline, the solicitors for either party receive a notice purporting to be an Opt Out Notice referable to this proceeding, the solicitors file the notice in the Principal Registry of the Supreme Court of Victoria within 10 days after receipt, and the notice is treated as an Opt Out Notice received by the Court at the time it was received by the solicitors.
8. The solicitors for both parties have leave to inspect the Court file and to copy any Opt Out Notice(s) filed by Group Members.



Claim registration

9. Pursuant to section 33ZF and 33ZG of the Act, any Group Member who wishes to obtain any benefit arising from any settlement (subject to Court approval) of the proceeding reached at the mediation conducted in accordance with order 20 of these orders register their claim by the Class Deadline (**'Registered Group Member'**).
10. A Group Member may register their claim by:
 - a. completing an online registration process hosted on a website by the solicitors for the Plaintiff; or
 - b. returning a completed Group Member registration form in the form of Schedule 1 to the Notice by post or email to the addresses indicated on the form.
11. To register their claim, each Group Member submit the following information, using their best endeavours:
 - a. the Group Member's name, mobile telephone number, and their email address;
 - b. the trading name of the business(es) operated by the Group Member which is (are) said to have been impacted by the "stage 3" restrictions, the "stage 4" restrictions, and/or the regional "stage 3" restrictions referred to in paragraph 1(b) of the Amended Statement of Claim dated 21 September 2022 (**'Restrictions'**);
 - c. a list of the premises from which the business(es) operated at which the Group Member says they were prohibited from supplying or were restricted from supplying goods or services to the public by reason of the Restrictions, together with a brief description of the business conducted at each location and details of the physical address of each of those locations;
 - d. an estimate of any Commonwealth or State government assistance, support or relief received by the Group Member in connection with the impacts of the Covid-19 pandemic on the business(es) operated by the Group Member, together with a brief description of the assistance, support or relief received;
12. In addition to the information required in order 11 above, each Group Member who estimates that their loss and damage equalled or exceeded \$10,000 also submit the following information in order to register their claim, using their best endeavours:
 - a. identify whether and when, during the period 2 July 2020 to 27 October 2020, the affected business(es) commenced or continued to trade by alternative arrangements, including online sales, deliveries and/or click and collect;
 - b. an estimate of the loss or damage allegedly suffered by the Group Member as a result of the Restrictions; and



- c. whether the Group Member had business interruption insurance (“**BI Insurance**”) coverage for the period 1 July 2020 and 27 October 2020 (and if so, the name of the insurer);
 - d. the amount of any BI insurance proceeds received by the Group Member in connection with the impacts of the Covid-19 pandemic on the business(es) operated by the Group Member in the period 1 July 2020 and 27 October 2020.
- 13. A Group Member is deemed a Registered Group Member if, by 26 February 2024, the Group Member has completed a registration process with the Plaintiff in connection with this proceeding.
- 14. Group Members who are deemed to have registered by the operation of order 13 above submit to the Plaintiff’s solicitors as soon as practicable, but in any event by no later than the Class Deadline, using their best endeavours and to the extent that they have not already done so, the same information as other Group Members are required to submit pursuant to orders 11 and 12 above.
- 15. Pursuant to section 33ZG of the Act and subject to any further order of the Court, any Group Member who does not register or opt out of the proceeding in accordance with the manner provided for in these orders by the Class Deadline:
 - a. will remain a Group Member in this proceeding for all purposes including for the purpose of being bound by any judgment in this proceeding and being bound by the terms (including releases) of any approved settlement agreement in the proceeding; and
 - b. shall not, without leave of the Court, be permitted to seek any benefit pursuant to any in-principle settlement (subject to the approval of the Court) of this proceeding reached at the mediation conducted in accordance with order 20 of these orders.
- 16. Any Group Member wishing to seek a variation of orders 9 and 15 file with the Court or the Plaintiff’s solicitors by no later than the Class Deadline written notice of the variation sought and a statement of the reasons for seeking the variation, and the Plaintiff’s solicitors forthwith notify and provide the Defendants and the Court with any notice and statement of reasons they receive.
- 17. If no in-principle settlement of this proceeding is reached at the mediation conducted in accordance with order 20 of these orders, and if the parties intend to conduct a further mediation and seek to extend the operation of order 15, either party may approach the Court seeking such orders. At that point, either party may propose such regime for notification of Group Members that the party considers reasonable and appropriate in



the interests of Group Members. including by proposing that Group Members not be provided with further notification.

18. The Plaintiff:

- a. by 26 March 2024, use its best endeavours to deliver to the solicitors for the Defendants a first tranche list, in tabular format, of the Registered Group Members, which list shall include for each Registered Group Member (including persons deemed to be Registered Group Members in accordance with order 13):
 - i. details of all information submitted by that date to Quinn Emanuel by Registered Group Members in respect of each item of information set out in orders 11 and 12;
 - ii. any amendments to the information as notified to Quinn Emanuel by that date;
- b. by 15 April 2024, use its best endeavours to deliver to the solicitors for the Defendants a second tranche list, in tabular format, of the Registered Group Members, which list shall include for each Registered Group Member (including persons deemed to be Registered Group Members in accordance with order 13):
 - i. details of all information submitted by that date to Quinn Emanuel by Registered Group Members in respect of each item of information set out in orders 11 and 12;
 - ii. any amendments to the information as notified to Quinn Emanuel by that date;
- c. by 13 May 2024, use its best endeavours to deliver to the solicitors for the Defendants a third tranche list, in tabular format, of additional Registered Group Members, which list shall include for each Registered Group Member (including persons deemed to be Registered Group Members in accordance with order 13):
 - i. details of all information submitted by that date to Quinn Emanuel by Registered Group Members in respect of each item of information set out in orders 11 and 12;
 - ii. any amendments to the information as notified to Quinn Emanuel by that date;
- d. by 1 July 2024, deliver to the solicitors for the Defendants a fourth and final tranche list, in tabular format, of additional Registered Group Members, which list shall include for each Registered Group Member (including persons deemed to be Registered Group Members in accordance with order 13):



- i. details of all information submitted to Quinn Emanuel by Registered Group Members in respect of each item of information set out in orders 11 and 12;
 - ii. any amendments to the information as notified to Quinn Emanuel by that date;
 - e. by 22 July 2024, file in a sealed envelope marked "*Confidential List of Group Members not to be Opened without leave of the Court or a Judge*", a list of Registered Group Members which list shall contain the same information as required to be delivered to the Defendants' solicitors at order 18 (a), (b), (c) and (d).
19. The lists of Registered Group Members provided in accordance with order 18 (a), (b), (c) and (d), and any information contained therein, be kept confidential to:
- a. the Defendants' legal advisors;
 - b. those employees and representatives of the Defendants who have the conduct of this proceeding or who provide instructions on behalf of the Defendants;
 - c. the Defendants' insurers (and their legal advisors); and
 - d. experts retained by the Defendants in the proceeding.

Mediation

20. The parties mediate the Plaintiff's claims in the proceeding and all ancillary and consequential matters. Such mediation is to commence on a date to be mutually agreed which is no earlier than 31 October 2024 and no later than 15 November 2024.
21. On or before 4:00pm on 15 April 2024, the Plaintiff file and serve particulars of its alleged loss and damage.
22. On or before 4:00pm on 7 June 2024, the Plaintiff serve, on a without prejudice basis, particulars of the alleged loss and damage of at least ten Group Members who are identified by the Plaintiff as being representative of the broader cohort of Group Members, and who include Group Members operating small, intermediate (between small and medium), medium and large scale businesses, in both Melbourne and in regional Victoria.
23. On or before 4:00pm on 7 June 2024, the Plaintiff serve any expert reports relating to loss and damage that it intends to rely upon on a without prejudice basis at the mediation to be conducted in accordance with order 20.
24. The parties serve mediation position papers and reply mediation position papers on dates to be mutually agreed in advance of the mediation conducted in accordance with order 20.



25. The mediation conducted in accordance with order 20 be conducted by a mediator agreed between the parties, with such agreement to occur by no later than 4 March 2024. If the parties cannot agree on a mediator by this date, the mediator is to be a Judicial Registrar of the Supreme Court of Victoria.

General

26. Costs be reserved.

DATE AUTHENTICATED:

12 February 2024



THE HONOURABLE JUSTICE KEOGH



ANNEXURE A- NOTICE

SUPREME COURT OF VICTORIA



NOTICE TO GROUP MEMBERS:

REGISTRATION & OPT OUT NOTICE

HOTEL QUARANTINE (BUSINESS LOSSES) CLASS ACTION

*5 Boroughs NY Pty Ltd v State of
Victoria & Ors (S ECI 2020 03402)*

THIS NOTICE IS SENT BY ORDER OF THE SUPREME COURT OF
VICTORIA.

**IT IS IMPORTANT THAT YOU READ THIS NOTICE CAREFULLY
BECAUSE IT MAY AFFECT YOUR LEGAL RIGHTS.**

THE CLASS DEADLINE IS 1 JULY 2024



OPT OUT AND REGISTRATION NOTICE

HOTEL QUARANTINE (BUSINESS LOSSES) CLASS ACTION

5 Boroughs NY Pty Ltd v State of Victoria & Ors (S ECI 2020 03402)

**THIS NOTICE IS VERY IMPORTANT AND IS ISSUED PURSUANT TO AN ORDER OF THE
SUPREME COURT OF VICTORIA - PLEASE READ IT CAREFULLY**

SUMMARY

1. This notice has been issued pursuant to an order of the Supreme Court of Victoria. It is about a class action proceeding called the Hotel Quarantine (Business Losses) Class Action.
2. In summary, the class action seeks compensation for retail businesses as a result of the “second-wave” lockdowns that occurred in Victoria from July to October 2020. The Plaintiff alleges that the lockdowns were a result of negligence in the hotel quarantine program.
3. If you have been sent this notice, you may be part of the group on whose behalf a claim is made in the class action (a “Group Member”). In simple terms, if members of the public would usually attend your business but were prevented from doing so by the second-wave lockdown restrictions and your business suffered loss as a result of those restrictions, you are likely to be a Group Member. Examples of Group Members would be restaurants, bars and retail shops.
4. There is to be a Court-ordered mediation in the class action in October/November 2024. A mediation allows the parties to determine if they can reach agreement about the outcome of the action (subject to Court approval). In order to settle, the parties need to understand the potential losses of the people represented in the action. If you wish to take part in any settlement reached at the mediation in October/November 2024, you need to register your claim with the solicitors for the Plaintiff by **4:00pm AEST on 1 July 2024**.
5. You also have the right to opt out of the class action if you do not want to be a part of it. If you wish to opt out of the class action, you need to provide an opt out notice by **4:00pm AEST on 1 July 2024**.

WHAT DO YOU NEED TO DO?

6. Your options on how to respond to this notice are set out below. These three options are:
 - (i) **Register** → The deadline to register your claim is **4:00pm AEST on 1 July 2024**. If you do not register by the deadline, you will remain a Group Member in the class action but, subject to further order of the Court, you will not be permitted to participate in any settlement reached at the mediation in October/November 2024. Registering your claim is risk and cost free. At no stage will you be liable for any out of pocket costs by registering your claim.
 - (ii) **Opt Out** → If you no longer wish to be a Group Member of the Hotel Quarantine (Business Losses) Class Action, this Notice provides you with information about how you can opt out the class action. The deadline to opt out is **4:00pm AEST on 1 July 2024**.
 - (iii) **If you do nothing** → If you do nothing in response to this Notice, you will remain a Group Member in the class action but, subject to any further order of the Court, you will not be permitted to participate in any settlement reached at the mediation in October/November 2024. You will be bound by such a settlement but will not be able to seek any benefit under that settlement.
7. If there is anything in this notice that you do not understand, you should contact Quinn Emanuel Urquhart & Sullivan (“Quinn Emanuel”), whose contact details are set out below or alternatively obtain your own legal advice.

Any questions that you may have about this Notice should not be directed to the Court.



WHAT IS THE HOTEL QUARANTINE (BUSINESS LOSSES) CLASS ACTION ABOUT?

1. On 21 August 2020, Quinn Emanuel commenced a class action on behalf of 5 Boroughs NY Pty Ltd (the **Plaintiff**) and the Group Members against the following Defendants:
 - a. the State of Victoria (**First Defendant**);
 - b. the former Minister for Health and Minister for the coordination of Health and Human Services: COVID-19) (**Second Defendant**);
 - c. the former Minister for the coordination of Jobs, Precincts and Regions (COVID-19) (**Third Defendant**);
 - d. the former Secretary of the Department of Health and Human Services (**Fourth Defendant**); and
 - e. the former Secretary of the Department of Jobs, Precincts and Regions (**Fifth Defendant**).
2. The Plaintiff seeks compensation for business losses suffered due to the alleged negligence of the Second to Fifth Defendants in relation to the management of the hotel quarantine program in Victoria. The Plaintiff contends that the First Defendant, the State of Victoria, is vicariously liable. The Defendants deny the claims made against them and are defending the class action.

ARE YOU A GROUP MEMBER IN THIS CLASS ACTION?

You have received this notice as you may be a Group Member
in the Hotel Quarantine (Business Losses) Class Action.

3. **You are a Group Member if you meet all 3 of the following criteria:**
 - a. as at 1 July 2020 you operated a retail business that supplied goods or services to the public from physical premises located in Victoria; and
 - b. members of the public acquired those goods or services by attending the physical premises of the business; and
 - c. as a result of the stage 3 and stage 4 restrictions in place in Melbourne and parts of regional Victoria between July and October 2020, your business was required to shut or operate at a reduced capacity and/or members of the public were restricted or prohibited from visiting your business premises and this caused your business to suffer financial losses.
4. The full Group Member definition appears at paragraph 1 of the Plaintiff's Amended Statement of Claim, a copy of which is available at <https://www.supremecourt.vic.gov.au/sites/default/files/2023-08/5%20Boroughs%20ASOC.pdf>.
5. If you meet the above criteria, you are a Group Member in the Hotel Quarantine (Business Losses) Class Action and you should read this Notice carefully as it will affect your rights.
6. You can check whether you may be an eligible Group Member via the registration form at <https://intake.sedgwick.com/u/QE/QE-Qualifying>. If you are still unsure about whether or not your business is eligible, you should contact Quinn Emanuel at hqclassaction@quinnemanuel.com.



YOUR THREE OPTIONS IN RESPONSE TO THE NOTICE

You have three options that you may elect to take in response to this Notice:

OPTION 1 - REGISTER

7. If you wish to participate in any settlement reached by the parties at the mediation in October/November 2024 and be eligible to receive compensation, you must register your claim.
8. It is free to register. You will not be liable for any upfront or “out of pocket” costs by registering your claim.
9. To register, you need to complete and submit a Registration Form by **4:00pm AEST on 1 July 2024**.
10. The Registration Form is available to complete online at <https://intake.sedgwick.com/u/QE/QE-Qualifying>.
11. Alternatively, you can complete a hard copy Registration Form (see Schedule 1 to this notice) and submit it:
 - a. by email to hqclassaction@quinnemanuel.com; or
 - b. by post, to the following address:

Quinn Emanuel
Hotel Quarantine (Business Losses) Class Action
Level 15,111 Elizabeth Street
Sydney NSW 2000
12. If you have previously registered your interest in the claim with Quinn Emanuel, you do not need to register again, but you may be contacted by a representative of Quinn Emanuel to ensure that you have provided all the information that is necessary in order to become a Registered Group Member.
13. If you do not register by the deadline, **4:00pm AEST on 1 July 2024** and a settlement is reached between the Plaintiff and Defendants at the mediation in October/November 2024, you will remain a Group Member but you will not be entitled to be paid any compensation from this class action, even if you would otherwise have had an eligible claim, subject to further order of the Court.

WHY SHOULD I REGISTER?

14. Registration:
 - a. allows Quinn Emanuel to confirm whether or not you are a Group Member and to contact you if you become eligible to receive compensation;
 - b. enables the parties to gain a better understanding of the amount of losses that Group Members may have suffered, and, as such, allows any settlement discussions to occur on a more informed basis and may facilitate the settlement of the proceeding at the upcoming mediation; and
 - c. may allow the parties to reach a resolution of the class action more quickly.
15. If you do not register by the deadline, **4:00pm AEST on 1 July 2024** and a settlement is reached between the Plaintiff and Defendants at the mediation in October/November 2024, you will remain



a Group Member but you will **not** be entitled to be paid any compensation from this class action, even if you would otherwise have had an eligible claim.

16. There is no cost to register. You will not be liable for any upfront or “out of pocket” costs by registering your claim.

OPTION 2 – OPT OUT AND CEASE TO BE A GROUP MEMBER

17. If you do not want to remain a Group Member in the Hotel Quarantine Class Action, you must opt out by **4:00pm AEST on 1 July 2024**.
18. If you wish to opt-out, you can do so by completing the “Opt Out Form” at Schedule 2.
19. Opt Out forms must be returned directly to the Principal Registry of the Supreme Court of Victoria:
- a. by post to:
Principal Registry
Supreme Court of Victoria
210 William Street
Melbourne VIC 3000; or
 - b. by email at covidblclassaction@supcourt.vic.gov.au.

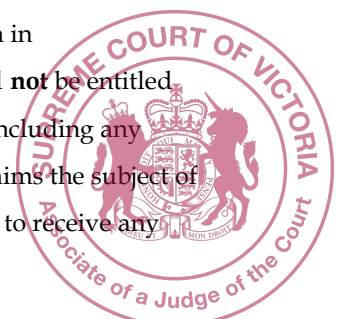
WHAT ARE THE CONSEQUENCES OF OPTING OUT?

20. If you opt out of the class action:
- a. you will not be bound by any order, judgment, or settlement in the Hotel Quarantine (Business Losses) Class Action;
 - b. you will not be entitled to share in the benefit of any order, judgment, or settlement in the Hotel Quarantine (Business Losses) Class Action; and
 - c. you will be able to commence separate proceedings against the Defendants on your own behalf outside of the Hotel Quarantine (Business Losses) Class Action provided you issue those proceedings within the time limit applicable to your claim.
21. If you are unsure on how opting out will affect your rights you should seek independent legal advice about your claim and the applicable time limit prior to opting out.
22. Each Group Member seeking to opt out should fill out a separate Opt Out form.
23. Opt out notices received after **4:00pm AEST on 1 July 2024** will not be accepted without leave of the Court and you will be treated as having not responded to this Notice.

OPTION 3 - DO NOTHING IN RESPONSE TO THIS NOTICE

24. If you do nothing in response to this Notice (i.e. neither register, nor opt out), you will remain a Group Member of the Hotel Quarantine (Business Losses) Class Action.
25. The practical implications of doing nothing in response to this Notice are that:

- a. if a settlement is reached between the Plaintiff and Defendants at the mediation in October/November 2024 and the settlement is approved by the Court, you will **not** be entitled to be paid any compensation. You will, however, be bound by the settlement, including any terms releasing the Defendants in respect of matters related or similar to the claims the subject of the Hotel Quarantine (Business Losses) Class Action (despite not being eligible to receive any



compensation). This means that your right to bring your own claim against the Defendants for matters related or similar to the claims the subject of the Hotel Quarantine (Business Losses) Class Action will be extinguished;

- b. If no settlement is reached between the Plaintiff and Defendants at the mediation in October/November 2024, you will be bound by the final judgment, and you will be entitled to obtain compensation and/or damages (if you satisfy the eligibility criteria set down by the Court) in the event that the Court finds in favour of the Plaintiff and Group Members. If the Hotel Quarantine (Business Losses) Class Action is unsuccessful or is not as successful as you might have wished, you will not be able to sue on the same claim in any other proceedings;
 - c. It is open to the Plaintiff and the Defendants to apply to the Court to extend the period during which only Registered Group Members are permitted to seek any benefit pursuant to settlement. It is unknown whether this will occur, and unknown what, if any, notice the Court will order to be provided to Group Members at that point. Accordingly, it is possible that if you remain an unregistered Group Member, you will not, without leave of the Court, be permitted to seek any benefit pursuant to any settlement of the Hotel Quarantine (Business Losses) Class Action even if that settlement occurs after the October/November 2024 mediation.
26. If you object to making one of the three choices described above (and the potential consequences of those choices), or you seek a variation of them, you must send a written notice to the Supreme Court's registry by email at covidblclassaction@supcourt.vic.gov.au or Quinn Emanuel by email to hqclassaction@quinnemanuel.com by 4:00pm AEST on 1 July 2024. Any notice challenging the Court orders received after this time will not be accepted. The written notice should set out the challenge you will make or the variation you seek and the reasons for doing so. You may then be required to attend the Supreme Court of Victoria at a later date to have your challenge / application for a variation of the arrangements heard.

FUNDING OF THE HOTEL QUARANTINE (BUSINESS LOSSES) CLASS ACTION

- 27. The Court has made a Group Costs Order (GCO) in the proceeding at a rate of 30% inclusive of GST, subject to further order. There are no "out of pocket" expenses for Group Members.
- 28. Quinn Emanuel is financed in part by Regency V Funding Pty Limited (**Regency**). Regency pays for all of the disbursements incurred by Quinn Emanuel in the proceeding.
- 29. A GCO is an order that the Court can make permitting legal costs payable to the plaintiff's lawyers to be calculated as a percentage of any damages award or settlement sum if the class action is successful – that is, if money is paid by the defendants to resolve the claims of the plaintiff and Group Members in the case. This can happen if (a) the plaintiff and defendants settle the case in



principle at mediation and the Court approves the settlement, or (b) through a judgment after the case is heard by the Court in a trial, or otherwise.

30. **If the class action is successful:**

- a. The plaintiff's lawyers will be paid 30% (inclusive of GST) of any damages awarded or any settlement sum approved by the Court, prior to those damages or that settlement sum being distributed to Group Members.
- b. The Court will assess whether the costs proposed to be deducted from any settlement sum are fair and reasonable. You will be given a notice at that time informing you of the amount which it is proposed to be deducted and given an opportunity to tell the Court if you agree or disagree with what is proposed.

31. **If the class action is unsuccessful:**

- a. Group Members will not pay any costs.
- b. An adverse costs order will not be made against you as a Group Member. In litigation, the Court will typically order the losing party to pay a proportion of the legal costs of the successful party. In class actions, only the plaintiff faces the risk of an adverse costs order if the action fails. The effect of the GCO is that, if the Hotel Quarantine (Business Losses) Class Action is unsuccessful, the plaintiff's lawyers will be liable to pay any costs payable to the defendants in the proceeding and will not be entitled to recover from the plaintiff or Group Members any legal costs or disbursements incurred or paid on their behalf in relation to the class action.



FURTHER INFORMATION

32. Please consider the matters addressed in this Notice carefully.
33. If you wish to seek further information about the class action, you can visit <https://hotelquarantineclassaction.com.au/>.
34. If there is any information in this notice that you are unsure about, or you have any questions or comments about the Notice, please contact Quinn Emanuel by emailing hqclassaction@quinnemanuel.com, or alternatively by telephone on (02) 9146 3636. You may also seek your own legal advice. You should not delay in making your decision.

OTHER LANGUAGES

35. You may be a group member of the Hotel Quarantine (Business Losses) Class Action commenced in the Supreme Court of Victoria on behalf of business owners who suffered losses to their business caused by the second wave lockdown in Victoria between 1 July 2020 and 27 October 2020.
36. If you are a non-English speaker, we suggest that you consult someone who can translate this notice for you, such as TIS National (<https://www.tisnational.gov.au/en/Non-English-speakers/Available-services>) as it contains important information that may affect your rights.



SCHEDULE 1

HOTEL QUARANTINE (BUSINESS LOSSES) CLASS ACTION

5 Boroughs NY Pty Ltd v State of Victoria & Ors (S ECI 2020 03402)

OPTION 1: GROUP MEMBER REGISTRATION FORM

If you would like to **register**, you must complete an online version of this form at <https://intake.sedgwick.com/u/QE/QE-Qualifying> by **4:00pm AEST on 1 July 2024**, or alternatively return a copy of this form to Quinn Emanuel by email or post at the below addresses.

If you are unsure whether you are a group member of the Hotel Quarantine (Business Losses) Class Action, please visit <https://hotelquarantineclassaction.com.au/>

If you have any questions about the class action and/or completing this form, please contact Quinn Emanuel by email: HQclassaction@quinnemanuel.com; or phone (02) 9146 3636..

By post: Quinn Emanuel Lawyers
Hotel Quarantine (Business Losses) Class Action
Level 15/111 Elizabeth Street
Sydney NSW 2000

By email: hqclassaction@quinnemanuel.com



GROUP MEMBER REGISTRATION FORM

SECTION 1 - GROUP MEMBER NAME AND CONTACT DETAILS

1. What are your contact details?

Your First Name

Your Surname

Phone Number (Mobile)

Email Address

SECTION 2 - DETAILS ABOUT YOUR AFFECTED BUSINESS

The information you provide in this section should relate only to the business which you say was impacted by the restrictions in place between **2 July 2020 and 27 October 2020**.

For example, when confirming the number of trading locations you should specify the number of impacted locations in the period 2 July 2020 to 27 October 2020 only, not the current number of locations.

If you operated multiple, different businesses which you say were impacted by the restrictions in place between 2 July 2020 and 27 October 2020, you need to complete a separate form for each distinct business. If it was one business, with multiple trading locations, you need only complete one form for that business.

2. Entity Name

3. ABN or ACN

4. Trading Name (if different from Entity Name)

5. Business Industry Code (BIC).....

6. Brief Description of the Business Conducted

(Please briefly describe the nature of the business conducted. For example, Hairdressing and Beauty Services; Accommodation and Food Services (i.e cafes and restaurants); Garden Supplies Retailing; Clothes Retailing; and Footwear Retailing. If the nature of the business conducted at different locations varied, please explain.)

.....

.....

7. Main Business Address (physical address)

.....

8. Number of Retail Trading Locations in Victoria

.....



9. **Address(es) of Other Retail Trading Locations (physical address)**

You should provide location details only for those locations from which you say you were prohibited or restricted from supplying goods or services to the public because of the restrictions in place between 2 July 2020 and 27 October 2020 (which may not be all of the locations from which the business traded). (If you require additional space to list the impacted locations, please attach additional pages.)

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SECTION 3- ECONOMIC LOSS DETAILS

10. Provide an estimate of the amount of any Commonwealth or State government assistance, support or relief received by you in connection with the impacts of the Covid-19 pandemic on your business.

.....

11. Type of assistance, support or relief, if received (tick all that apply):

☐ Jobkeeper ☐ Government grant(s) ☐ Other

If you received a government grant(s) or other assistance, support or relief, please briefly describe the assistance, support or relief received:

.....

.....

.....

12. Is your estimate of the business losses suffered by your business as a result of the restrictions in place between 2 July 2020 and 27 October 2020 less than \$10,000?

☐ Yes (please go to Section 4 below)

☐ No (please answer the remaining questions in Section 3 before going to Section 4)

13. Provide an estimate of the business losses suffered by your business as a result of the restrictions in place between 2 July 2020 and 27 October 2020.

.....



14. During the period 1 July 2020 to 27 October 2020, did your affected business commence or continue to trade by alternative arrangements?

July 2020 ☐ No ☐ Online sales ☐ Delivery ☐ Click and Collect

August 2020 ☐ No ☐ Online sales ☐ Delivery ☐ Click and Collect

September 2020 ☐ No ☐ Online sales ☐ Delivery ☐ Click and Collect

October 2020 ☐ No ☐ Online sales ☐ Delivery ☐ Click and Collect

15. Did you have Business Interruption Insurance (**BI Insurance**) coverage for the period 1 July 2020 to 27 October 2020?

☐ Yes ☐ No

If you answered "Yes", please provide the name of the insurer and the amount of any BI Insurance proceeds received in connection with the impacts of the Covid-19 pandemic on the business operated by the Group Member in the period 1 July 2020 to 27 October 2020.

.....

.....

Section 4 – Group Member Declaration

I understand and agree that by completing this form, I am providing details about my interest in participating in the Class Action. I acknowledge that the lawyers acting on behalf of the plaintiff, Quinn Emanuel Urquhart & Sullivan ("Quinn Emanuel"), will have full conduct of the Class Action. I accept that by completing this form I will not automatically be entitled to compensation. I acknowledge that Sedgwick may collect and process my personal information for the purposes of registering my interest in the Class Action and for all purposes related my involvement in the Class Action. For further information on how Sedgwick will process your personal information please refer to Sedgwick's privacy policy (<https://www.sedgwick.com/global-privacy-policy>).

☐ I agree with the legal and compliance statement above.

I confirm that the information I have provided in this form is true and complete.

Signature:

Date:



SCHEDULE 2

HOTEL QUARANTINE (BUSINESS LOSSES) CLASS ACTION

5 Boroughs NY Pty Ltd v State of Victoria & Ors (S ECI 2020 03402)

OPTION 2: NOTICE OF OPTING OUT BY GROUP MEMBER

Only complete this form if you wish to **OPT OUT** of the Hotel Quarantine Class Action. If you Opt Out, you will no longer be a Group Member.

To: Principal Registry
Supreme Court of Victoria
210 William Street
Melbourne Victoria 3000
covidblclassaction@supcourt.vic.gov.au

I, [print name]

am a Group Member in the above group proceeding, **OR**

I, [print name]

am a director of [company name]

who is a Group Member in the above group proceeding.

The above named Group Member is opting out of this proceeding by this notice.

Date:	
Signature of Group Member, company representative or Group Member's solicitor	
Email address of Group Member or company representative:	
Address of Group Member:	

If you would like to **opt out** of the Hotel Quarantine Class Action, please return this form to the Principal Registry of the Supreme Court of Victoria by email (covidblclassaction@supcourt.vic.gov.au) or by post (210 William Street, Melbourne, Victoria 3000) by **4:00pm AEST on 1 July 2024**.



ANNEXURE B – ABRIDGED NOTICE

OPT OUT AND REGISTRATION NOTICE

HOTEL QUARANTINE (BUSINESS LOSSES) CLASS ACTION

5 Boroughs NY Pty Ltd v State of Victoria & Ors (S ECI 2020 03402)

THIS NOTICE IS VERY IMPORTANT AND IS ISSUED PURSUANT TO AN ORDER OF THE
SUPREME COURT OF VICTORIA – PLEASE READ IT CAREFULLY

What is the hotel quarantine (business losses) class action about?

The class action seeks compensation for retail businesses as a result of the “second-wave” lockdowns that occurred in Victoria from July to October 2020. The Plaintiff alleges that the lockdowns were a result of negligence in the hotel quarantine program.

Are you a class member?

You are a class member if you meet all 3 of the following criteria:

- a. as at 1 July 2020 you operated a retail business that supplied goods or services to the public from physical premises located in Victoria; and
- b. members of the public acquired those goods or services by attending the physical premises of the business; and
- c. as a result of the stage 3 and stage 4 restrictions in place in Melbourne and parts of regional Victoria between July and October 2020, your business was required to shut or operate at a reduced capacity and/or members of the public were restricted or prohibited from visiting your business premises and this caused your business to suffer financial losses.

The full class member definition appears at paragraph 1 of the Plaintiff’s Amended Statement of Claim, a copy of which is available at <https://www.supremecourt.vic.gov.au/sites/default/files/2023-08/5%20Boroughs%20ASOC.pdf>.

Class action deadline

The Court has made orders that:

1. Any person who wishes to make a claim in any settlement of the hotel quarantine class action reached between the Plaintiff and the Defendants at the mediation in October/November 2024 for loss suffered as a result of the Defendants’ conduct must complete a registration form by **4:00pm AEST on 1 July 2024**. (A copy of the registration form is available to complete online at <https://intake.sedgwick.com/u/QE/QE-Qualifying>); and
2. Any person who does not wish to participate in the class action must opt out of the class action by **4:00pm AEST on 1 July 2024**.

If you do nothing in response to this notice (i.e. if you do not register by the deadline or if you do not opt out of the class action), and the case settles at the October/November 2024 mediation, you will NOT be entitled to be paid any compensation from this class action, even if you would otherwise have had an eligible claim. You will, however, be bound by the settlement (despite not being eligible to participate in the settlement), including any terms releasing the Defendants in respect of matters related or similar to the claims the subject of the class action.

If you have previously registered your interest in the claim with the Plaintiff’s solicitors (Quinn Emanuel) by completing the registration form on their website, you do not need to do so again, but you may be contacted by a representative of Quinn Emanuel to ensure that you have provided all the information that is necessary in order to become a Registered Group Member.

More information

If you believe you may be a class member, it is important that you read the further information available at <https://hotelquarantineclassaction.com.au/> as soon as possible as it may affect your legal rights.



ANNEXURE C - EMAIL NOTICE

RE: HOTEL QUARANTINE (BUSINESS LOSSES) CLASS ACTION- REGISTRATION & OPT OUT NOTICE

This email contains important information that may affect your legal rights. Please read it carefully and consider your options.

This communication has been made pursuant to Court orders made on 12 February 2024.

You are receiving this email because you have been identified as a person who may be a Group Member in the Hotel Quarantine (Business Losses) Class Action. The class action seeks compensation for retail businesses as a result of the “second-wave” lockdowns that occurred in Victoria from July to October 2020. The Plaintiff alleges that the lockdowns were a result of negligence in the hotel quarantine program.

Opt out and registration

The Court has made orders that:

1. Any person who wishes to make a claim in any settlement of the Hotel Quarantine (Business Losses) Class Action reached between the Plaintiff and the Defendants at the mediation in October/November 2024 for loss suffered as a result of the Defendants’ conduct must complete a registration form by **4:00pm AEST on 1 July 2024**; and
2. Any person who does not wish to participate in the class action must opt out of the class action by **4:00pm AEST on 1 July 2024**.

The Court has approved an **Opt Out and Registration Notice** regarding these orders, which is available here: <https://hotelquarantineclassaction.com.au/>.

The Opt Out and Registration Notice includes information about:

1. how to determine whether you are an eligible Group Member;
2. if you are an eligible Group Member:
 - a. how to register your claim to participate in any settlement reached between the parties at the mediation in October/November 2024; or
 - b. your right to opt out of the class action.

The deadline to register your claim or opt out of the class action is **4:00pm AEST on 1 July 2024**.

- You can **register your claim online** by completing the registration form available at <https://intake.sedgwick.com/u/QE/QE-Qualifying>.
- You can **opt out of the proceeding** by completing the “Opt Out Form” at Schedule 2 of the Opt Out and Registration Notice, which is available at <https://hotelquarantineclassaction.com.au/>. Opt Out Forms must be returned directly to the Principal Registry of the Supreme Court of Victoria by post or by email at the addresses indicated on the form.

If you do nothing in response to this notice (i.e. if you do not register by the deadline or if you do not opt out of the class action), and the case settles at the October/November 2024 mediation, you will NOT be entitled to be paid any compensation from this class action, even if you would otherwise have had an eligible claim. You will, however, be bound by the settlement (despite not being eligible to participate in the settlement), including any terms releasing the Defendants in respect of matters related or similar to the claims the subject of the class action.

If there is anything you do not understand or if you have any questions, you may seek independent legal advice or contact Quinn Emanuel by email: HQclassaction@quinnemanuel.com; or phone (02) 9146 3636. Any questions you have concerning the matters contained in the notice should not be directed to the Court.

